

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

MARCELLUS JONES,)	
)	
Plaintiff,)	
)	
v.)	Civil Action No. 19-397
)	
ROBERT GILLMORE; ZAKEN;)	
DIALESANDRO; SOKOL; TRACEY SHAWLEY;)	
LEGGETT; CARO; WILLIAM NICHOLSON;)	
STEPHANIE WOOD; DENISE SMITH;)	
JAMES BRESHAHN; LORI RIDINGS; AUSTIN;)	
CHAMBERS; PAMELA LNU; KELLIE GETTY;)	
TATE; JOHNSON; RAMIREZ; JON DOE;)	
ADAMSON; HECHECABARA in their)	
individual capacities,)	
)	
Defendants.)	

ORDER

Presently pending before the Court is the Pro Se Plaintiff's Amended Complaint, (ECF No. 8), the Corrections Defendants' Partial Motion to Dismiss, filed on behalf of Defendants Adamson, Caro, DiAlesandro, Getty, Gilmore, Hechavarria, Leggett, Nicholson, Ramirez, Shawley, Sokol, Tate, Wood and Zaken (collectively, the "DOC Defendants") (ECF No. 17), and the Motion for Partial Dismissal of Plaintiff's Amended Complaint filed on behalf of Defendants Ridings, Austin, Daniel and Bresnahan (the "Medical Defendants") (ECF Nos. 30 and 35), the Pro Se Plaintiff's Motion for Temporary Restraining Order, (ECF No. 40), and Plaintiff's renewed request for injunctive relief related to access to legal property (ECF No. 50). In his renewed motion Plaintiff contends that he cannot access all of his legal property related to this

action due to limitations on in-cell boxes of legal property in his restricted housing unit. He alleges that these limitations are retaliatory in nature due to his litigation against DOC defendants. The record makes clear that Plaintiff's ability to litigate this action has not been impaired nor his access to the Court denied.

After a *de novo* review of the Report and Recommendation filed by the United States Magistrate Judge granting the parties until July 28, 2020, to file written objections thereto, no objections having been filed, and upon independent review of the record, and the following order is hereby entered.

AND NOW, this 4th day of August, 2020, IT IS HEREBY ORDERED THAT the Magistrate Judge's Report and Recommendation dated July 14, 2020 (ECF No. 56, is adopted as the opinion of this Court. Accordingly,

IT IS FURTHER ORDERED that the Corrections Defendants' Partial Motion to Dismiss, (ECF No. 17), as to Plaintiff's claims for Retaliation, Conspiracy, Access to Court, Equal Protection, Due Process and state tort law claims are GRANTED, that the Medical Defendants' Motion for Partial Dismissal of Plaintiff's Amended Complaint, (ECF No. 30), as to all claims asserted against Defendant Natalie Austin, but deny the Motion for a More Definite Statement is GRANTED, and that the Plaintiff's Petition for Temporary Restraining Order & Injunctive Relief, (ECF No. 40), is DENIED.

IT IS FURTHER ORDERED that Plaintiff's "Motion for Preliminary Injunction and Restraining Order" (ECF No. 50) is hereby GRANTED IN PART AND DENIED IN PART as follows:

(a) Defendants shall document each request for an exchange of legal property related to this action, the response with regard to access granted or denied, and the reasons for any denial; and

(b) Defendants' counsel shall file a copy of each request and response thereto on the docket of this matter as a "Notice" and provide Plaintiff with a copy of each Notice filed in accordance with this Order.

IT IS FURTHER ORDERED that before dismissing claims for failure to state a claim upon which relief may be granted, the Court must grant Plaintiff leave to amend his complaint unless amendment would be inequitable or futile. *See Grayson v. Mayview State Hosp.*, 293 F.3d 103, 114 (3d Cir. 2002). Accordingly, it is ordered that the claims identified as deficient are dismissed without prejudice to allow Plaintiff a period of thirty days, to September 3, 2020, to file a Second Amended Complaint in conformance with the Magistrate Judge's Report and Recommendation.

IT IS FURTHER ORDERED that, pursuant to Rule 4(a)(1) of the Federal Rules of Appellate Procedure, if any party wishes to appeal from this Order a notice of appeal, as provided in Fed. R. App. P. 3, must be filed with the Clerk of Court, United States District Court, at 700 Grant Street, Room 3110, Pittsburgh, PA 15219, within thirty (30) days.

s/Robert J. Colville
Hon. Robert J. Colville
United States District Judge

cc: Honorable Maureen P. Kelly
United States Magistrate Judge

All Counsel of Record by electronic filing

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